

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JORGE L. LINARES,

Plaintiff,

-against-

ANTHONY ANNUCCI, as Acting Commissioner
for the Department of Corrections and Community
Supervision; TINA M. STANFORD, as
Chairwoman of the New York State Board of
Parole; WALTER W. SMITH; ELLEN E.
ALEXANDER; MARC COPPOLA; TANA
AGOSTINI; CHARLES DAVIS; ERIK
BERLINER; OTIS CRUSE; TYCEE DRAKE;
CARYNE DEMOSTHENES; CARLTON
MITCHELL; MICHAEL CORLEY; CHAN WOO
LEE; SHEILA SAMUELS; and ELSIE
SEGARRA, as Commissioners of the New York
State Board of Parole,

Defendants.

19-CV-11120 (CS)

ORDER OF SERVICE

Cathy Seibel, United States District Judge:

Plaintiff, currently incarcerated at Otisville Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights. By order dated December 12, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP).¹

Discussion

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summonses and complaint until the Court reviewed the complaint and ordered that summonses be issued. The Court therefore extends the time to serve until 90 days after the date the summonses are issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendants Anthony Annucci, Acting Commissioner for the Department of Corrections and Community Supervision; Tina M. Stanford, Chairwoman of the New York State Board of Parole; and New York State Board of Parole Commissioners Walter W. Smith, Ellen E. Alexander, Marc Coppola, Tana Agostini, Charles Davis, Erik Berliner, Otis Cruse, Tycee Drake, Caryne Demosthenes, Carlton Mitchell, Michael Corley, Chan Woo Lee, Sheila Samuels, and Elsie Segarra through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for each of these Defendants. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these Defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

The Clerk of Court is further instructed to issue summonses, complete the USM-285 forms with the addresses for Anthony Annucci, Acting Commissioner for the Department of Corrections and Community Supervision; Tina M. Stanford, Chairwoman of the New York State Board of Parole; and New York State Board of Parole Commissioners Walter W. Smith, Ellen E. Alexander, Marc Coppola, Tana Agostini, Charles Davis, Erik Berliner, Otis Cruse, Tycee Drake, Caryne Demosthenes, Carlton Mitchell, Michael Corley, Chan Woo Lee, Sheila Samuels, and Elsie Segarra and deliver all documents necessary to effect service to the U.S. Marshals Service.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: December 18, 2019
White Plains, New York


CATY SEIBEL
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Anthony Annucci, Acting Commissioner for the Department of Corrections and Community Supervision
1220 Washington Avenue
Albany, New York 12226
2. Tina M. Stanford, Chairwoman of the New York State Board of Parole
97 Central Avenue
Albany, New York 12206
3. Walter W. Smith, New York State Board of Parole Commissioner
97 Central Avenue
Albany, New York 12206
4. Ellen E. Alexander, New York State Board of Parole Commissioner
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5. Marc Coppola, New York State Board of Parole Commissioner
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6. Tana Agostini, New York State Board of Parole Commissioner
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7. Charles Davis, New York State Board of Parole Commissioner
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12. Carlton Mitchell, New York State Board of Parole Commissioner
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13. Michael Corley, New York State Board of Parole Commissioner
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14. Chan Woo Lee, New York State Board of Parole Commissioner
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15. Sheila Samuels, New York State Board of Parole Commissioner
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16. Elsie Segarra, New York State Board of Parole Commissioner
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